
Summaries

Article 102 and de minimis

Richard Whish

This article discusses the recent judgments of the Court of Justice in *Post Danmark II* and of the High Court in *Streetmap.EU Ltd v Google Inc*, in particular with reference to the question of whether there is a de minimis doctrine under Article 102 TFEU. On different facts the courts reached different conclusions. Further light may be shed on this issue in the forthcoming judgments of the Court of Justice in the *Intel* case and the Court of Appeal in *Streetmap*.

Another chapter in the *Emerald Supplies v British Airways* saga: the Court of Appeal on economic torts and the confidentiality of the Commission decision

Kim Dietzel, Molly Herron and Grace Aylward

This article considers the Court of Appeal's October 2015 judgment in *Emerald Supplies Ltd and Others v British Airways plc*, in which the Court of Appeal struck out a large portion of the claimants' cartel damages case brought on the basis of economic torts, and denied the claimants access to a confidential version of the EU Commission decision in the underlying cartel investigation. It assesses the implications of the case on the conduct of competition damages claims in the English courts in the future.

Bringing contribution proceedings in cartel damages actions in the English courts

Sophie Matthiesson

This article examines the options available to a cartel member who is a defendant in a competition damages action in the High Court or the Competition Appeal Tribunal to bring a contribution claim against a co-cartel member who is not a party to the litigation. This is a relatively untested area of the law but one which is coming into greater focus as private enforcement continues to grow.

The case against parallel trade in respect of patented drugs

Dermot Glynn

This article considers the impact of parallel trade in patented pharmaceutical products on issues such as patient safety and affordability of medicines, and questions whether there should be a change in prevailing EU competition law policy against restrictions on parallel trade in this sector.

Debunking the pay for delay myth: pay for delay settlements are no ordinary patent settlements

Sven Gallasch

On 12 February 2016 the Competition and Markets Authority (CMA) issued its first infringement decision concerning so-called pay for delay settlements in the UK pharmaceutical market, imposing a fine of £44.99 million on the branded pharmaceutical company GlaxoSmithKline plc and a number of generic pharmaceutical companies. This article considers the CMA's decision and seeks to debunk arguments that pay for delay agreements are patent settlements that reduce litigation costs, create legal certainty and are also pro-competitive as they allow for early generic entry. It argues that pay for delay agreements are not 'normal' patent settlements whose exclusionary power is derived from the validity of the underlying patent and should therefore never be immune from competition law scrutiny.

OECD Roundtable – Relationship between public and private antitrust enforcement: UK Submission

Leonia Chesterfield

In the UK, the private enforcement of competition law has developed significantly in recent years. Alongside Germany and the Netherlands, the UK has one of the most active private antitrust enforcement regimes in the EU.

The UK as a forum of choice for private litigants is likely to continue given legislative reforms designed to facilitate private damages claims which entered into force in October 2015. These changes, which were introduced by the Consumer Rights Act 2015, are in addition to the EU Directive on antitrust damages actions to be implemented by 27 December 2016, also intended to bolster private antitrust enforcement. It is anticipated there will be a material increase in the volume of private antitrust enforcement in the UK following the reforms. A key aspect of the reforms is the new opt-out collective actions regime under Consumer Rights Act 2015 designed to improve the ability of claimants, in particular SMEs and consumers, to obtain damage for loss caused by anticompetitive behaviour. The new opt-out regime is unprecedented in the UK.

Estimating the overcharge caused by cartels: a comparison of two popular approaches

Spyros Droukopoulos and James May

In follow-on claims for cartel damages, a key step is to estimate the cartel overcharge—the amount by which the cartel raised prices to purchasers. Margins analysis and price analysis are two widely used approaches for estimating overcharge. What are their strengths and weaknesses, and is one more appropriate than the other?